2848.

SUPREME COURT OF THE UNITED STATES.

No. 271.

THE UNITED STATES, APPELLANTS,

vs.

JOSÉ ANTONIO ALVISO.

APPEAL FROM THE DISTRICT COURT UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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GIDEON, PRINT.

Transcript of the proceedings in case No. 359—Jose Antonio Albisu, claimant, vs. *The United States, defendant—for the place named "Canada Verde."*

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this twenty-third of September, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of José Antonio Albisu, for the place named "Cañada Verde," was presented, and ordered to be filed and docketed with No. 359, and is as follows, to wit:

(Vide page 3 of this Transcript.)

Upon which petition the following subsequent proceedings were had, in their chronological order, to wit:

SAN FRANCISCO, *February* 12, 1853.

In case No. 359, José Antonio Albisu, for the place named "Cañada de Verde" y "Arroyo de la Purissima," the deposition of Pedro Chaboya, a witness in behalf of the claimants, taken before Commissioner Harry J. Thornton, with document marked H. J. T. Nos. 1 and 2, and translation thereof annexed thereto, was filed.

(Vide page 6 of this Transcript.)

SAN FRANCISCO, *February* 23, 1853.

In the same case the deposition of Manuel de Marantez, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(Vide page 8 of this Transcript.)

SAN FRANCISCO, *February* 24, 1853.

In the same case the deposition of Manuel de Marantez, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, with document marked H. H. No. 1, annexed thereto, was filed.

(Vide page 9 of this Transcript.)

SAN FRANCISCO, *February* 26, 1853.

In the same case the deposition of José Castro, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, with document marked H. H. No. 1, annexed thereto, was filed.

(Vide page 11 of this Transcript.)

SAN FRANCISCO, *March* 12, 1853.

In the same case the deposition of José de la Cruz Sanchez, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(Vide page 5 of this Transcript.)

SAN FRANCISCO, *May* 2, 1854.

Case No. 359 was ordered to be placed at the foot of the first class cases on the trial docket.

SAN FRANCISCO, *July* 25, 1854.

In the same case the deposition of José Maria Covarrubias, a witness in behalf of the claimant, taken before Commissioner Peter Lott, was filed.

(Vide page 11 of this Transcript.)

SAN FRANCISCO, *Aug.* 1, 1854.

Case No. 359 was submitted on brief and taken under advisement.

SAN FRANCISCO, *July* 10, 1855.

In the same case, Commissioner J. B. Farwell delivered the opinion of the board confirming the claim.

(Vide page 29 of this Transcript.)

And the following order was made, to wit:

(Vide page 31 of this Transcript.)

Petition.

To the Board of U. S. Land Commissioners for California.

Your petitioner, José Antonio Alviser, respectfully showeth, that he claims to be the owner of a tract of land known as La Cañada de Verde y Arroyo de la Purissima, of the extent of two square leagues, situate in the northwestern part of the county of Santa Cruz, described and bounded as follows, viz: on the north by the Arroyo de la Purissima, of the extent of two square leagues, situate in the northwestern part of the county of Santa Cruz, described and bounded as follows, viz: on the north by the Arroyo de la Purissima, or creek separating the same from the rancho of Candalario Miramontes; on the east by the Sierra or side of mountains running nearly parallel with the coast; on the south by the rancho formerly granted to Antonio Buelna; and on the west by the ocean.

That your petitioner claims the said land by purchase from his brother José Maria Alviser, made April 10th, 1840.

That on the 23d of April, A. D. 1837, the said José Maria Alviser presented his petition to Juan B. Alvarado, then governor of California, his petition praying in the usual form for a concession to himself of the said tract of land.

That said Alvarado referred said petition to the administrador of the ex mission of San Francisco for a report, and at the same time made a provisional grant to said José Maria, authorizing and empowering him to occupy said until, upon the coming in of said report, a more formal grant should issue.

That immediately thereupon the said José Maria took possession of said land, occupied and cultivated it, making it the home of himself and family.

That on the 30th of April, 1840, the administrador of the ex mission of San Francisco, to whom the said petition had been referred, made his report upon the same, to the effect that the land was vacant, and could be granted, and returned said documents to the said José Maria, who thereupon, pursuant to a contract of sale theretofore made of said land by him to your petitioner, executed at the foot of said report a conveyance of said land to your petitioner.

That your petitioner and his said brother being in possession, and the reputed owners of said land, and the said documents being deemed full evidence of ownership, your petitioner neglected to perform the mere formality of returning them to the governor, and receiving from him, which would have been a matter of course, the usual and formal definitive grant, until a change of government made this step impracticable.

Your petitioner states, however, that the occupation of himself and his said brother of said land, commencing as aforesaid, has continued now for more than fifteen years; that not only has said ownership been universally acknowledged by the neighboring inhabitants, but that it has been recognised and acted upon by the judicial tribunals of the Mexican government.

Your petitioner further states, that the documents above referred have been kept by him as his instruments of title up to the present time, and that he offers them to the inspection of the board.

Your petitioner knows of no claim to said land conflicting with his own, and he prays that his said claim to said land may be confirmed by your honorable body.

CLARK, TAYLOR & BECKH,
Att's for Pet.

Filed in office Sept. 23d, 1852.
(Signed) GEO. FISHER, *Sec'y.*

Depo. of Jose de la Cruz Sanchez.

SAN FRANCISCO, *March* 14, 1853.

On this day before Com'r Hiland Hall came José de la Cruz Sanchez, a witness in behalf of the claimant, José Antonio Alviser—petition No. 359—and was duly sworn, his evidence being given in Spanish, and interpreted by the secretary.

In answer to inquiries by counsel for the claimant, the witness testified as follows:

My name is José de la Cruz Sanchez; my age is fifty-six years; and I reside in the county of San Francisco. A paper is now shown me, which is attached to the deposition of Manuel de Marantes heretofore taken in this case, and marked H. H. No. 1.

The report, to which my name is attached, was made by me when I was administrador of the mission of San Francisco de Assis, and my genuine signature which now appears to it was placed there at the time it bears date.

I know the rancho called de la Purissima; it has been occupied by José Antonio Alviser for some years, but I cannot tell how long; he had a house there, and lived there before the Americans, but I cannot state how long before.

JE. DE LA CRUZ SANCHEZ.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office March 14, 1853.

(Signed) GEO. FISHER, *Sec'y.*

Depo. of Pedro Chaboya.

SAN FRANCISCO, *Feb'y* 12, 1853.

On this day before Com'r H. J. Thornton came Pedro Chaboya, a witness in behalf of the claimant, José Anto. Avila—petition No. 359—and was duly sworn, his evidence being interpreted by the secretary.

Questions by Claimant.

Question 1st. What is your name, age, and place of residence?

Answer. My name is Pedro Chaboya; my age about seventy-three years; and I reside at my rancho in the pueblo of San José.

Question 2d. Look at the document now shown you, marked Exhibit 1, and attached to your deposition, purporting to be an agreement executed by José Maria Alviso, in favor of his brother, José Antonio Alviso, dated 2d of May, 1840, signed by the said José Maria Alviso, by making the sign of a cross, and attested by Pedro Chaboya. State what you know concerning said document, and whether the cross thereto, as the signature of the said José Maria Alviso, was so affixed by him?

Answer. I was present when the said agreement was made and executed; I saw José Maria Alviso make the cross upon said document, and signed my own name then and there as a witness thereto.

Question 3d. Look at the document now shown you, marked Exhibit 2, and attached to your deposition, purporting to be a provisional concession made by José Castro to José Antonio Alviso, on the 10th of June, 1839. State what you know concerning said document, and whether the signature thereto is genuine?

Answer. I am well acquainted with the handwriting of José

Castro, having frequently seen him write. The signature to the document shown me is the genuine signature of José Castro.

PEDRO CHABOYA.

Service recognised.

R. GREENHOW,
Ass't Law Agent.

Sworn to and subscribed before me, this 12th of February, 1853.

HARRY J. THORNTON,
Com'r.

Filed in office Feb'y 12, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Depo. of Manuel de Mirantes.

SAN FRANCISCO, *Feb'y* 23, 1853.

On this day before Com'r Hiland Hall came Manuel de Marantes, a witness in behalf of the claimant, José Antonio Alviso—petition No. 359—and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

In answer to inquiries by counsel for the claimant the witness testified as follows: My name is Manuel de Marantes; my age is forty-four years, and I reside in the county of Santa Clara. I know the rancho called La Purissima, claimed by José Antonio Alviso, and have known it ever since 1840; it is on the coast of the ocean, twenty or thirty miles from this place, and is bounded on the north by Candelano Miramontes, on the south by Antonio Buelna, on the east by John Coppinger, a mountain covered by red-wood being the division between them, and on the west by the ocean. In the year 1840 the said Alviso put 140 head of cattle on the land, built two small cabins, one for sleeping and the other for cooking. In 1845 he built a good wooden house on it; up to that time he had occupied the land, and had some twenty acres fenced in and under cultivation, and his stock had been constantly increasing. In 1845 he moved his family into the said house, and they resided there fourteen years, and for a portion of the time ever since. I was herdsman for him from 1840 to 1842.

his
MANUEL DE ⋈ MARANTES.
mark.

Sworn and subscribed before me.

HILAND HALL,
Com'r.

Filed in office Feb. 23, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Depo. of Manuel de Marantes.

SAN FRANCISCO, *Feb.* 24, 1853.

On this day before Com'r Hiland Hall came Manuel de Marantes, a witness in behalf of the claimant José Antonio Alviso—petition No. 359—and was duly sworn, his evidence being interpreted by the sec'y.

The U. S. associate law agent was present.

In answer to inquiries by counsel for the claimant the witness testified as follows: My name is Manuel de Marantes; my age is forty-four years, and I reside in the county of Santa Clara. I am acquainted with the rancho La Purissima; José Ma. Alviso had a grant of the rancho from Governor Alvarado; he was owing money, and it was agreed between him and his brother José Antonio Alviso that Antonio should pay the debt, and receive for it the land.

This agreement was made early in the year 1840, in my presence, and the paper now shown me, and which is hereto attached and marked H. H. No. 1, was then handed over by José Maria to said Antonio, and I have often seen it in said Antonio's possession since that time. I was, after that, herdsman for said Antonio for eighteen months, in 1840, 1841, and 1842.

his
MANUEL ⋈ MARANTES.
mark.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

Filed in office Feb'y 24, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Depo. of Jose Castro.

SAN FRANCISCO, *Feb'y* 26, 1853.

On this day before Com'r Hiland Hall came José Castro, a witness produced in behalf of the claimant, José Antonio Alviser—petition No. 359—and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

In answer to inquiries by the associate law agent, the witness testified as follows:

My name is José Castro; my age forty-four years, and I reside at Monterey. A paper now shown me, marked H. H. No. 1, and hereto attached, is a genuine original paper, and was signed by me at the time it bears date.

JOSÉ CASTRO.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

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Filed in office Feb'y 26, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Depo. of Jose M. Covarrubias.

UNITED STATES OF AMERICA,
State of California, ss.

SAN FRANCISCO, *July* 25, 1854.

This day personally came before Peter Lott, commisioner for taking testimony to be used before the board of U. S. L. commission, in said State, José M. Covarrubias, a witness on behalf of the claimant, José Antonio Alviser, in case No. 359 on the docket of said board. Said witness being duly sworn on oath, deposed in Spanish, which being interpreted by the interpreter as follows.

The U. S. associate law agent is present.

Questions by Claimant's Counsel.

1st question. What is your name, age, and residence?

Answer. My name is José Maria Coarrubias; my age 46 years; my residence Santa Barbara county, California.

2d question. Do you know the handwriting of Juan B. Alvarado, former governor of California? if yea, state your means of knowledge, and look at the document marked H. H. No. 1, annexed to the depo. of Manuel de Marantes, &c., and filed in this case, and state whether the name of said Alvarado, as it appears in the original decree of said document opposite the diseño, is his genuine signature.

Answer. I was personally and intimately acquainted with said Alvarado; have often seen him write and sign his name, and this is his genuine signature, without any doubt.

J. M. COVARRUBIAS.

Subscribed and sworn to before me on this 25th day of July, A. D. 1854.

PETER LOTT,
Com'r, &c.

Filed in office July 25, 1854.
(Signed) GEO. FISHER, *Sec'y.*

[*Here follows map—original, page* 12.]

H. H. No. 1, *annexed to the Deposition of Manuel de Marantes.*

S'or Gefe Sup'or Polit'o:

El ciudadano José Ma. Alviso ante V. S. respetuosamente me presento, y digo que deseando dedicarme al interesante ramo de la agricultura, por ser este el giro á que me inclina mi profession,

para el adelanto de algun numero de bienes de campo que poses, suplico a V. S. se serva concederme conforme a las leyes de colonization, dos sitios de ganado mayor en las tierras que hay desde el Arroyo de la Purissima á los linderos del rancho del ciudadano Antonio Buelna. Este terreno es baldio, no pertenece á la propiedad de ningun individuo, pueblo, ó mission. P. F.

A V. S. suplico se sirve dar á esta mi instancia el giro correspondiente serviendose al mismo tiempo concederme provisionalm'te su ocupacion mientras se resuelve el espediente, jurando lo necessario, &c.; serviendose admitir esta en papel comun, por no haber del sello que corresponde en este lugar.

Sta. Clara, M'zo 25, de 1838.

JOSÉ MA. ALVISO.

STA. CLARA, *M'zo* 25, *de* 1838.

Informe el administrador de la ex mission de San Fran'co de Assis, en concepto de que siendo baldio el terreno mencionado puede el interesado en virtud de este decreto occuparlo provisionalmente deviendo acompañar el diseño correspondiente.

ALVARADO.

El administrador de la ex mission de S. Fran'co de Assis en vista del decreto que antecede dice; con respeto al terreno que solicita el interesado en la instancia presedente, que d'ho terreno es valdio, y nunca sa ha ocupado, ni reconocido pr. propiedad de este establicim'to ni de otro particular, en tal concepto; puede consedersele.

Establicim'to de Dolores, Abril 30, de 1840.

JOSE DE LA C. SANCHEZ.

Sedo mi derecho que por la presente concesion mi pertenece à mi permano José Antonio Alviso, y para los efectos que le convengan firmo la presente en.

Sta. Clara, Abril 30, de 1840.

JOSÉ MARIA ALBISO.

Filed in office February 24th, 1853.

B.—*Translation of H.*

Mr. Superior Political Chief:

The citizen José Maria Alviso respectfully presents himself before your honor, and represents that, being desirous to dedicate himself to the interesting pursuit of agriculture, this being the occupation to which he is inclined by profession, as well as by the fact of his possessing a number of cattle, he solicits that, using , it may please your honor to concede to him, conformably to the laws of colonization, two square leagues of land in the territory situated between the Arroyo de la Purissima and the borders of the rancho of citizen Antonio Buelna. This land is vacant, and does not appertain to the property of any individual, pueblo, or mission.

Wherefore, he asks that your honor would see fit to subject this his petition to the corresponding course of procedure, being pleased at the same time to concede to him, provisionally, the occupation of the land while the espediente is in process of being formed, having taken the necessary oath, &c.; asking that this be admitted on common paper, for the reason that there is no corresponding stamped paper in this place.

JOSÉ MARIA ALVISO.

Santa Clara, April 25th, 1838.

(*In the Margin.*)

STA. CLARA, *April 25th*, 1838.

Let the administrador of the ex mission of San Francisco de Assis report. In view of which, the land described being vacant, the interested parties (petitioner) may occupy it, provisionally, by virtue of this decree, which should also be accompanied by the corresponding map, (diseño.)

ALVARADO.

The administrator of the ex mission of San Francisco de Assis, in view of the preceding decree, reports, in regard to the land which the party to the foregoing petition solicits, that the said land has never been occupied nor recognised as property by this establishment, nor by any private claimant.

Establishment of Dolores, April 30, 1840.

JOSÉ DE LA CRUZ SANCHEZ.

The interest pertaining to me by virtue of the above concession, I convey to my brother José Antonio Alviso, and for such objects as may serve him. I execute these presents in Santa Clara, April 30th, 1840.

JOSÉ MARIA ALVISO.

Filed in office Sept. 23, 1852.

(Signed) GEO. FISHER, *Sec'y.*

Exhibit No. 1 *annexed to the Depo. of Pedro Chaboya, before Com'r H. F. Thornton.*

No Conformandose mi hermano, José Antonio Alviza, con la simple secion que de mi derecho hajo del terreno solicitado por mi, he convenido con mi dicho hermano en venderselo de acuerdo con mi esposa, en la contidad de mil docientos pesos, los que he recibido en moneda corriente á mi entera satisfaccion compromi tiendose por su parte a seguir los ocursos que le convengan ante el gobierno. Y por este y por la mia renuncio cuanto a mi derecho haya lugar, á nombre de mis herederos, y sucesores para que en ningun tiempo, pueden hacer reclamo alguno. Siendo testigos de este contrato y venta, Los Señores, Don Tomas Pacheco y Don Pedro Chaboya,

rubricado por mi parte con mia señal de cruz por no saber. En la mission de Santa Clara á dos de Mayo, de mil ochocientos cuarenta.

PEDRO CHABOYA.

Filed in office Feb'y 12, 1853.

GEO. FISHER, *Sec'y.*

Translation of Exhibit No. 1 *annexed to Depo. of Pedro Chaboya.*

My brother, José Antonio Alviser, not being satisfied with the simple cession of the right I have to the land solicited by me, I have agreed with my said brother to sell it to him, with the assent of my wife, for the quantity of twelve hundred dollars, which I have received in current money, to my entire satisfaction, binding myself on his part to take the steps belonging thereto before the government.

And for that, and for my part, I renounce my right thereto, in the name of my heirs and successors, so that at no time any reclamation may be made, the witnesses to this contract and sale being the Señores Don Tomas Pacheco and Don Pedro Chaboya, signing for my part, with a sign of the cross, because I do not know how to write.

In the mission of Santa Clara, the second of May, eighteen hundred and forty.

(Signed) ⋈

(Signed) PEDRO CHABOYA.

Filed in office Feb'y 12, 1853.

(Signed) GEO. FISHER, *Sec'y.*

Exhibit No. 2, *annexed to the Depo.*

Vista la petition con que el ciud'o José Antonio Albiza hace a la prefectura de mi cargo del terreno de la Cañada Verde se la debuelvo para que la eleve al Ex'mo S'or gobernador para su consecion, disponiendo por mi parte que puede provisionalmente ocupar el terreno por constarle a la prefectura de mi cargo el ser valdio entendido la parte interesada que el Ex'mo S'or gobernador es à quien corresponde por la ley conceder los terrenos como ella lo previeno.

Dios y Libertad. Pueblo de S. José, Junio 10, de 1839.

JOSÉ CASTRO,

S'OR DN. JOSÉ ANTONIO ALBIZA.

Filed in office Feb'y 12, 1853.

GEO. FISHER, *Sec'y.*

Translation of Exhibit No. 2, *annexed to Depo. of Pedro Chaboya.*

Having seen the petition which the citizen José Antonio Alvizo has made to the prefecture under my charge of the land of the Cañada Verde, I reserve it him, so that he may bring it to his

excellency the governor for the concession, disposing on my part, that he may provisionally occupy the land. It has appeared to the prefecture under my charge to be unoccupied, the interested party understanding that his excellency the governor is the person to whom pertains by law the concession of lands, as provided by the law.

God and Liberty.

Pueblo de S. José, June 10, 1839.

(Signed) JOSÉ CASTRO.

Filed in office Feb. 13, 1853.

(Signed) GEO. FISHER, *Sec'y.*

Doc. H. H. No. 1, *annexed to the Depo. of Jose Castro.*

I Ciudadano José Castro, Teniente Coronel de Caballaria y Comandante General interino del Departamento de Californias.

Certifico que en el año de mil ochocientos cuarenta, siendo prefecto de este distrito solicito Don José Antonio Albiso el terreno llamado Cañada Verde lindero la arroyo de la Purissima, en estencion de medio sitio de ganado mayor, y à pedimento del interesado le doy el presente, pa. los usos qe. le convengan. En Monterrey à veinte y seis de Abril de mil ochocientos cuarenta y seis.

JOSÉ CASTRO.

Filed in office Feb'y 26, 1853.

GEO. FISHER, *Sec'y.*

Translation of Doc. H. H. No. 1, *annexed to Depo. of Jose Castro.*

The citizen José Castro, Lieutenant Colonel of Cavalry, and Commander General "ad interim" of the Department of Californias.

I certify that in the year eighteen hundred and forty, being prefect of this district, Don José Antonio Alviso solicited the land called Cañada Verde, from the boundary of the arroyo of Purissima, in extension of half a sitio de ganado mayor; and at the solicitation of the interested party I give him the present, for the uses that may suit him.

Monterey, 26th April, 1846.

(Signed) JOSÉ CASTRO.

Filed in office Feb. 26, 1853.

(Signed) GEO. FISHER, *Sec'y.*

Opinion of the Board delivered by Commissioner S. B. Farwell.

JOSÉ ANTONIO ALVISA vs. THE UNITED STATES. } No. 359.—For a place called Cañada de Verde, containing two square leagues, in the county of Santa Cruz.

The petitioner, in this case, claims title under his brother, José Maria Alviza, and in support of his claim he has offered in evi-

dence the original espediente, of the said José Maria Alvisa, *ackning* a concession of the land, dated the 25th day of April, 1838, accompanying which is a map of the place.

To which espediente is also attached an order from Governor Alvarado to the administrator of the mission of San Francisco, to report whether the land is vacant, together with a provisional grant, authorizing the petitioner to occupy the place until the report could be received and a further grant be issued; the order and provisional grant bearing date the 25th of April, 1838.

The petitioner has also offered in evidence a deed of conveyance from the grantee to himself, dated the 2d day of May, 1840. All of which documents are properly authenticated. The proofs in the case establish the facts, that the original grantee went into immediate possession of the same, and built dwelling-houses, and lived in the place with his family, and that he and the present claimant have continued to occupy the same ever since, to the time of filing his petition herein.

We are of the opinion that the evidence in this case clearly establishes an equitable right to a confirmation, and a decree will be entered accordingly.

Filed in office July 10, 1855.

(Signed) GEO. FISHER, *Sec'y.*

Decree of Confirmation.

José Antonio Alvisa vs. The United States. } No. 359.

In this case, on hearing the proofs and allegations, it is adjudged by the commission, that the claim of the said petitioner is valid, and it is therefore decreed that his application for a confirmation thereof be allowed.

The land of which confirmation is hereby given is situated in the county of Santa Cruz, containing two square leagues, and is called "Cañada de Verde," and to be located between the Arroyo de la Purissima and the borders of the rancho of Antonio Buelna; reference being had to the grant, and map accompanying the espediente, on file in this case.

R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office July 10, 1855.

(Signed) GEO. FISHER, *Sec'y.*

And it appearing to the satisfaction of this board, that the land hereby adjudicated is situated in the northern district of California, it is hereby ordered that two transcripts of the proceedings, and of the decisions in this case, and of the papers and evidence upon

which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the northern district of California, and the other be transmitted to the Attorney General of the United States.

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing thirty-one pages, numbered from 1 to 31, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 359 on the docket of the said board, wherein José Antonio Albisu is the claimant against the United States, for the place known by the name of "Cañada Verde."

In testimony whereof, I hereunto set my hand and affix my private seal (not having a seal of office) at San Francisco, California, this twenty-first day of November, A. D. 1855, and of the independence of the United States of America the eightieth.

[SEAL.]

GEO. FISHER, *Sec'y.*

Notice of Appeal in Case No. 359.

OFFICE OF THE ATTORNEY GENERAL OF THE U. S.,
Washington, 31 *Dec.*, 1855.

359.—"Cañada Verde."—José Antonio Albisu, claimant.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of Cal'a in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 18th day of December, 1855, the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

C. CUSHING,
Attorney General.

Endorsed: Filed Feb'ry 11, 1856.
JOHN A. MUNROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Petition.

To the honorable District Court of the United States in and for the northern district of California.

THE UNITED STATES, Appellants,
vs.
JOSE ANTONIO ALVISO. } No. 350.

The petition of the United States, by their attorney, represents

that this cause is an application for a review of the decision of the board of commissioners, whereby the claim of the said appellee was confirmed, as appears by reference to the records in the case; that a transcript of the said records was filed in this court on the 1st day of December, 1855; that a notice of appeal was filed on the 11th day of February, 1856, and that the land claimed lies in the said district; that the said claim is invalid. Wherefore appellants pray that the said decision of the board be reversed, and that this court decree the said title to be invalid.

Respectfully, &c.,

(Signed) S. W. INGE,
U. S. Dist. Att'y.

Endorsed: Filed April 20th, 1856.
JNO. A. MUNROE, *Clerk.*

Decree of the Court by Judge Hoffman.

At a stated term of the district court of the United States for the northern district of California, continued and held in and for the said district, at the court-room of the said court, in the city of San Francisco, on Monday, the 9th day of March, A. D. 1857.

Present, the Honorable Ogden Hoffman, district judge.

THE UNITED STATES, Appellants,
vs.
JOSE ANTONIO ALVISO, Appellee. } Decree No. 350.

No. 350.—On appeal from the final decision of the board of commissioners to ascertain and settle the private land claims in the State of California.

This cause came on to be heard at a stated term of the court, on appeal from the final decision of the board of commissioners to ascertain and settle the private land claims in the State of California, under an act of Congress approved on the 3d day of March, A. D. 1851, upon the transcript of the proceedings and decision of the said board of commissioners, and of the papers and evidence upon which the said decision was founded; and it appearing, to the satisfaction of the court, that the said transcript has been duly filed according to law, and counsel for the respective parties having been heard, it is by the court hereby adjudged, ordered, and decreed, that the said decision be, and the same is hereby, in all things affirmed, save only in the description of the land thereby confirmed. And it is likewise further adjudged, ordered, and decreed, that the claim of the said appellee is a good and valid claim, and the same is hereby confirmed to the said appellee to the extent and quantity of two square leagues of land, being the same land described in the petition of José Maria Alviso to Juan B. Alvarado, governor of the department of the Californias, dated the 25th day of March, A. D. 1838, and the marginal decree of the said Alvarado, governor as afore-

said, written thereon, and of which land the possession is proved to have been long enjoyed: Provided, that the said quantity of two square leagues be contained within the boundaries called for by the said petition, and the said marginal decree, and the map thereto attached, all of which are on file among the papers in this cause; but if there be less than the said quantity of land contained within the said boundaries, then the said claim is confirmed to the extent of such less quantity, and no more.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed this 9th day of March, A. D. 1857.
JNO. A. MUNROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Granting Appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Tuesday, the twenty-fourth day of March, in the year of our Lord one thousand eight hundred and fifty-seven. Present, the honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
JOSÉ ANTONIO ALVISO. } D. C. 350.—L. C. 359.

In this case, on application of the United States attorney, made in open court, it is ordered by the court, that an appeal in behalf of the United States from the final decision of this court, rendered at the present term, be, and the same is hereby granted, and that a certified transcript of the pleadings, evidence, depositions, and proceedings in the said cause be sent to the Supreme Court of the United States without delay.

Endorsed: Filed March 24, 1857.
JOHN A. MUNROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

I, John A. Munroe, clerk of the district court of the United States for the northern district of California, do hereby certify that the annexed pages, from 1 to 27 inclusive, contain a full, true, and correct transcript of the record on file from the board of land commissioners, together with the pleadings, order, and decree filed in this office in the case entitled The United States, appellants, vs. José Antonio Alviso, appellee.

In testimony whereof, I have hereunto set my hand, and affixed the seal of the said court, the second day of October, A.
[SEAL.] D. 1857, and of the independence of the United States of America the eighty-second.

JNO. A. MONROE, *Cl'k.*

Filed 29th March, 1858.

2854

SUPREME COURT OF THE UNITED STATES.

No. 158.

WILLIAM B. SUTTON, SAMUEL L. GRIFFITH, AND JAMES SUTTON, COPARTNERS, UNDER THE FIRM AND STYLE OF SUTTON, GRIFFITH & CO., PL'FFS IN ERROR,

vs.

STACY B. BANCROFT, THOMAS BEAVER AND AL., COPARTNERS, UNDER THE FIRM AND STYLE OF BANCROFT, BEAVER & CO.

IN ERROR TO THE DISTRICT COURT U. S. FOR THE WESTERN DISTRICT OF ARKANSAS.

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GIDEON, print.

UNITED STATES OF AMERICA.

The President of the United of America to the judge of the District Court of the United States of America, for the western district of Arkansas, having circuit court jurisdiction, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said district court having circuit court jurisdiction, before you, between Stacy B. Barcroft, Thomas Beaver, John M. Mauck, Witherell Lee, Thomas S. Foster, Samuel T. Canby, Matthew P. McEwen, and J. W. Bray, merchants and partners in trade, doing business under the firm, name, and style of Barcroft, Beaver & Co., plaintiffs, and William B. Sutton, Samuel L. Griffith, and James Sutton, late merchants and partners in trade, trading and doing business under the name, style, and firm of Sutton, Griffith & Co., defendants, a manifest error hath happened, to the great damage of the said Sutton, Griffith & Co., as by their complaint appears; and it being fit that the error, if any there hath been, should be corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 31st day of [SEAL.] May, in the year of our Lord one thousand eight hundred and fifty-six, and of the independence of the United States the eightieth.

Attest: A. McLEAN, *Clerk.*

Filed 31st May, A. D. 1856.

A. McLEAN, *Clerk.*

UNITED STATES OF AMERICA,
Northern District of Arkansas, ss.

I, Alexander McLean, clerk of the United States district court in and for the western district of Arkansas, hereby certify to the honorable Supreme Court of the United States, that an authenticated transcript of the judgment, and all things concerning the

same, together with a correct copy of the original files and pleadings within mentioned, are annexed to this writ, and herewith returned as within commanded.

Witness my hand as clerk, and the seal of said district court, this the 8th day of February, A. D. 1858, and of the independence of the United States the eighty-second year.

[SEAL.]

A. McLEAN, *Clerk.*

Be it remembered, that at district court of the United States of America for the western district of Arkansas, begun and held at the court-house, in the city of Van Buren, the county seat of Crawford county, on the second Monday in May, in the *in the* year of our Lord one thousand eight hundred and fifty-six—present the Honorable Daniel Ringo, judge—the following proceedings were had, to wit:

Declaration.

UNITED STATES OF AMERICA, *sct.*

In the District Court of the United States for the western district of Arkansas, to the May term, A. D. 1856.

Stacy B. Barcroft, Thomas Beaver, John H. Mauck, Witherell Lee, Thomas S. Foster, Samuel T. Canby, Mathew P. McEwen and J. W. Bray, who are citizens of the State of Pennsylvania, merchants and partners in trade, trading and doing business together, under the name, style and firm of "Barcroft, Beaver & Co.," plaintiffs in this suit, by attorney, complain of William B. Sutton, Samuel L. Griffith and James Sutton, late merchants and partners in trade, trading and doing business together under the name, firm and style of "Sutton, Griffith & Co.," and who are citizens of the State of Arkansas, defendants herein, of a plea of assumpsit:

For that whereas the said defendants, on the twenty-third day of March, in the year of our Lord one thousand eight hundred and fifty-five, at Philadelphia, to wit, in the district aforesaid, made their certain promissory note in writing, which to the court here now shown, bearing date the day and year aforesaid, and then and there delivered the said note to the said plaintiffs, and thereby promised by their said partnership style of "Sutton, Griffith & Co.," to pay to the order of the said plaintiffs by their said partnership style of Barcroft, Beaver & Co., in Philadelphia, twenty-eight hundred and fifty-five dollars and forty-eight cents, negotiable and payable without defalcation or discount, for value received, and without any relief whatever from appraisement or valuation laws, six months after the date thereof; which period has now elapsed. And the said defendants, then and there, in consideration of the premises, promised to pay the said plaintiffs the said sum of money in said note specified, according to the tenor and effect thereof.

Yet the said defendants, not regarding their said promise, have hitherto neglected and refused, and still do neglect and refuse to pay the said plaintiffs, or to their order, the said sum of money, or any part thereof, to the damage of the plaintiffs five thousand dollars, and therefore they sue.

J. M. TIBBETTS,
Attorney for the Plaintiffs.

Filed 7th April, A. D. 1856.

A. McLEAN, *Clerk.*

Bond for Costs.

I, Jonas M. Tibbetts, of Washington county, in the State of Arkansas, do hereby acknowledge myself to owe "Sutton, Griffith & Co.," the defendants in the foregoing declaration named, the sum of fifty dollars, conditioned for the payment of all costs which may accrue in a certain action about to be commenced in the district court of the United States for the western district of Arkansas, of which the foregoing is the declaration.

Witness my hand and seal, this 4th April, A. D. 1856.

JONAS M. TIBBETTS. [SEAL.]

Filed 7th April, A. D. 1856.

A. McLEAN, *Clerk.*

Upon which was issued the following writ:

Writ.

[L. S]

UNITED STATES OF AMERICA,
Western District of Arkansas.

The President of the United States to the Marshal of the western district of Arkansas, greeting:

You are hereby commanded to summon William B. Sutton, Samuel L. Griffith and James Sutton, late merchants and partners in trade, trading and doing business together under the name, firm, and style of "Sutton, Griffith & Co.," and who are citizens of the State of Arkansas, if they be found within your bailiwick, to appear before the judge of our district court of the United States of America, in and for the western district of Arkansas, at the court-house, in the city of Van Buren, on the first day of our next May term, to answer Stacy B. Barcroft, Thomas Beaver, John H. Mauck, Witherell Lee, Thomas S. Foster, Samuel T. Canby, Mathew P. McEwen and J. W. Bray, who are citizens of the State of Pennsylvania, merchants and partners in trade, trading and doing business under the name, style, and firm of "Barcroft, Beaver & Co.," of a plea of assumpsit, to the damage of the plaintiffs five thousand dollars, and have you then there this writ.

In testimony whereof, Daniel Ringo, judge of the district court of the United States for the western district of Arkansas, hath

caused the seal of said court to be hereunto affixed, this 7th day of April, A. D. 1856, and in the eighteenth year of our independence.

Attest:

A. McLEAN, *Clerk.*

Marshal's Return on writ.

This writ came to hand 7th day of April, 1856, and was executed on the within named William Sutton and Samuel L. Griffith, by reading the same to them in their presence and hearing, in Fort Smith, Sebastian county, Arkansas, on the 8th day of April, 1856, and on James Sutton, by reading the same to him in his presence and hearing, in the town of Fayetteville, Washington county, Arkansas, on the 11th day of April, 1856.

S. M. HAYS,
U. S. Marshal West'n Dist. Ark's.
By R. A. MILLER, *Deputy.*

Marshal's fees:

Serving on 3 persons, at $2 each.....	$6 00
66 miles travel, one way only, 6 c.....	3 96
	$9 96

Said writ was also endorsed:
Filed 15th May, A. D. 1856.

A. McLEAN, *Clerk.*

Monday morning, 9 o'clock, 19th May, A. D. 1856. Court met pursuant to adjournment; present, the Honorable Daniel Ringo, judge.

BARCROFT, BEAVER & Co. vs. SUTTON, GRIFFITH & Co. } Assumpsit.

On this day comes James Sutton, defendant, and files his plea in abatement to the plaintiffs' writ.

Plea.

UNITED STATES OF AMERICA.

In the District Court of the United States for the western district of Arkansas, having Circuit Court jurisdiction.

WILLIAM B. SUTTON, SAMUEL L. GRIFFITH, and JAMES SUTTON, late partners in trade under the firm, name, and style of Sutton, Griffith & Co., Defendants,
ag'st
STACY B. BARCROFT, THOMAS BEAVER, JOHN H. MAUCK, Witherell Lee, Thomas S. Foster, Samuel T. Canby, Mathew P. McEwen, and J. W. Bray, partners in trade under the firm, name, and style of Barcroft, Beaver & Co., Plaintiffs.

And the said defendant, James Sutton, comes and defends the wrong and injury, when, &c., and prays judgment of the writ and declaration aforesaid, because he says that the said plaintiffs are non-residents of the State of Arkansas, and that no person or persons previous to the issuing of the said writ, or at any other time, became security for the costs of said suit by writing endorsed on the said declaration subscribed and sealed by such security, whereby such security acknowledged himself or themselves bound for all the costs which might accrue in this suit, for the payment of which the said plaintiffs should be in anywise responsible, in accordance to the provisions of the 7th rule of practice of this court, and now of record in the same, and this he, the said defendant, is ready to verify; wherefore he prays judgment of the said writ and declaration, and that the same may be quashed, &c.

CLARK & SPRING,
WALKER & GREEN,
HUMPHREYS,
Att'ys for J. Sutton.

Filed 19th May, A. D. 1856.

A. McLEAN, *Clerk.*

Wednesday morning, 8 o'clock, 21st May, A. D. 1856. Court met pursuant to adjournment; present, the Honorable Daniel Ringo, judge.

BARCROFT, BEAVER & Co., Plaintiffs,
vs.
SUTTON, GRIFFITH & Co., Defendants. } Assumpsit.

This day come the plaintiffs by attorney, and filed their replication to the defendant James Sutton's plea.

Replication.

UNITED STATES OF AMERICA.

In the District Court of the United States for the western district of Arkansas—May Term, A. D. 1856.

STACY B. BARCROFT, THOMAS BEAVER, JOHN H. MAUCK, et al., partners under the style of Barcroft, Beaver & Co.,
vs.
WILLIAM B. SUTTON, SAMUEL L. GRIFFITH, and JAMES SUTTON, late partners under the firm, name, and style of Sutton, Griffith & Co.

The plaintiffs say that the said writ and declaration ought not to be quashed, because they say that Jonas M. Tibbetts, of Washington county, in the State of Arkansas, previous to the issuance of said writ in this cause, became security for the cost of said suit

by writing endorsed upon the said declaration subscribed and sealed by the said Tibbetts, which is in the words and figures following, to wit:

I, Jonas M. Tibbetts, of Washington county, in the State of Arkansas, do hereby acknowledge myself to one Sutton, Griffith & Co., the defendants in the foregoing declaration named, the sum of fifty dollars, conditioned for the payment of all costs which may accrue in a certain action about to be commenced in the district court of the United States for the western district of Arkansas, of which the foregoing is the declaration.

Witness my hand and seal this 4th April, A. D. 1856.

JONAS M. TIBBETTS. [SEAL.]

And this the said plaintiffs are ready to verify; wherefore they pray judgment, &c.

J. M. TIBBETTS,
Att'y for Pl'ffs.

Filed in open court 21st May, A. D. 1856.

A. McLEAN, *Clerk.*

Thursday morning, 8 o'clock, 22d May, A. D. 1856. Court met pursuant to adjournment; present, the Hon. Daniel Ringo, judge.

STACY B. BARCROFT, THOMAS BEAVER, JOHN H. Mauck, Witherell Lee, Thomas S. Foster, Samuel T. Canby, Mathew P. McEwen, and J. W. Bray, citizens of the State of Pennsylvania, merchants and partners in trade, trading and doing business together under the name, firm, and style of Barcroft, Beaver & Co., Plaintiffs,

vs.

WILLIAM B. SUTTON, SAMUEL L. GRIFFITH, and James Sutton, late merchants and partners in trade, trading and doing business together under the name, firm, and style of Sutton, Griffith & Co., Defendants.

} Assumpsit.

This day the defendant, James Sutton, files his demurrer to the plaintiffs' replication to his plea in abatement; and thereupon the said demurrer came on to be heard, and was argued by counsel, and the court being now sufficiently advised in the premises, is of opinion that the replication aforesaid, and the matters therein contained, are sufficient in law to maintain said writ and declaration of the said plaintiffs; wherefore it is considered by the court that the said defendant James Sutton do further answer to said writ of the said plaintiffs; and the said James Sutton declining to answer further, rests upon his demurrer; and the said defendants William

B. Sutton and Samuel L. Griffith having been duly served with process more than thirty days before the commencement of the present term of this court, being solemnly called, come not, but wholly make default, whereby the plaintiffs' action against them remains undefended, wherefore the plaintiffs ought to recover their damages sustained by reason of the premises; and the plaintiffs' action being founded on a promissory note here in court filed, gives to the court here sufficient evidence of the damages sustained by the plaintiffs by reason of the premises, and the court doth find that the same amount to the sum of $2,969 $\frac{69}{100}$. It is therefore considered by the court here that the said plaintiffs do have and recover of and from the said defendants as well the sum of two thousand nine hundred and sixty-nine dollars and sixty-nine cents, ($2,969 69,) their damages sustained by reason of the premises, as also all their costs in and about this suit laid out and expended, &c.

Copy of Note.

2,855 dollars 48 cents.

PHILADELPHIA, *March* 23, 1855.

Six months after date we, the subscribers, residing at Fort Smith, county of Sebastian, State of Ark., promise to pay to the order of Barcroft, Beaver & Co., in Philadelphia county, eight hundred and fifty-five $\frac{48}{100}$ dollars, negotiable and payable without defalcation or discount, for value received, and without any relief whatever from appraisement or valuation laws.

(Signed) SUTTON, GRIFFITH & CO.

Filed 22d May, A. D. 1856. A. McLEAN, *Clerk.*

Thursday morning, 8 o'clock, 29th May, A. D. 1856. Court met pursuant to adjournment; present, the Hon. Daniel Ringo, judge.

BARCROFT, BEAVER & Co., Plaintiffs,
vs.
SUTTON, GRIFFITH & Co., Defendants. } Assumpsit.

At this day comes Samuel L. Griffith, defendant, by Clark & Spring, attorneys, and files his motion in writing, in arrest of judgment in this cause, for reasons therein set forth.

Motion in Arrest.

UNITED STATES OF AMERICA.

In the District Court of the United States for the western district of Arkansas.

SUTTON, GRIFFITH & Co., Defendants,
vs.
BARCROFT, BEAVER & Co., Plaintiffs. } Assumpsit.

And now comes the said defendant, Samuel L. Griffith, and

by writing endorsed upon the said declaration subscribed and sealed by the said Tibbetts, which is in the words and figures following, to wit:

I, Jonas M. Tibbetts, of Washington county, in the State of Arkansas, do hereby acknowledge myself to one Sutton, Griffith & Co., the defendants in the foregoing declaration named, the sum of fifty dollars, conditioned for the payment of all costs which may accrue in a certain action about to be commenced in the district court of the United States for the western district of Arkansas, of which the foregoing is the declaration.

Witness my hand and seal this 4th April, A. D. 1856.

JONAS M. TIBBETTS. [SEAL.]

And this the said plaintiffs are ready to verify; wherefore they pray judgment, &c.

J. M. TIBBETTS,
Att'y for Pl'ffs.

Filed in open court 21st May, A. D. 1856.

A. McLEAN, *Clerk.*

Thursday morning, 8 o'clock, 22d May, A. D. 1856. Court met pursuant to adjournment; present, the Hon. Daniel Ringo, judge.

STACY B. BARCROFT, THOMAS BEAVER, JOHN H. Mauck, Witherell Lee, Thomas S. Foster, Samuel T. Canby, Mathew P. McEwen, and J. W. Bray, citizens of the State of Pennsylvania, merchants and partners in trade, trading and doing business together under the name, firm, and style of Barcroft, Beaver & Co., Plaintiffs,

vs.

WILLIAM B. SUTTON, SAMUEL L. GRIFFITH, and James Sutton, late merchants and partners in trade, trading and doing business together under the name, firm, and style of Sutton, Griffith & Co., Defendants.

} Assumpsit.

This day the defendant, James Sutton, files his demurrer to the plaintiffs' replication to his plea in abatement; and thereupon the said demurrer came on to be heard, and was argued by counsel, and the court being now sufficiently advised in the premises, is of opinion that the replication aforesaid, and the matters therein contained, are sufficient in law to maintain said writ and declaration of the said plaintiffs; wherefore it is considered by the court that the said defendant James Sutton do further answer to said writ of the said plaintiffs; and the said James Sutton declining to answer further, rests upon his demurrer; and the said defendants William

B. Sutton and Samuel L. Griffith having been duly served with process more than thirty days before the commencement of the present term of this court, being solemnly called, come not, but wholly make default, whereby the plaintiffs' action against them remains undefended, wherefore the plaintiffs ought to recover their damages sustained by reason of the premises; and the plaintiffs' action being founded on a promissory note here in court filed, gives to the court here sufficient evidence of the damages sustained by the plaintiffs by reason of the premises, and the court doth find that the same amount to the sum of $2,969 $\frac{69}{100}$. It is therefore considered by the court here that the said plaintiffs do have and recover of and from the said defendants as well the sum of two thousand nine hundred and sixty-nine dollars and sixty-nine cents, ($2,969 69,) their damages sustained by reason of the premises, as also all their costs in and about this suit laid out and expended, &c.

Copy of Note.

2,855 dollars 48 cents.

PHILADELPHIA, *March* 23, 1855.

Six months after date we, the subscribers, residing at Fort Smith, county of Sebastian, State of Ark., promise to pay to the order of Barcroft, Beaver & Co., in Philadelphia county, eight hundred and fifty-five $\frac{48}{100}$ dollars, negotiable and payable without defalcation or discount, for value received, and without any relief whatever from appraisement or valuation laws.

(Signed) SUTTON, GRIFFITH & CO.

Filed 22d May, A. D. 1856. A. McLEAN, *Clerk.*

Thursday morning, 8 o'clock, 29th May, A. D. 1856. Court met pursuant to adjournment; present, the Hon. Daniel Ringo, judge.

BARCROFT, BEAVER & Co., Plaintiffs,
vs.
SUTTON, GRIFFITH & Co., Defendants. } Assumpsit.

At this day comes Samuel L. Griffith, defendant, by Clark & Spring, attorneys, and files his motion in writing, in arrest of judgment in this cause, for reasons therein set forth.

Motion in Arrest.

UNITED STATES OF AMERICA.

In the District Court of the United States for the western district of Arkansas.

SUTTON, GRIFFITH & Co., Defendants,
vs.
BARCROFT, BEAVER & Co., Plaintiffs. } Assumpsit.

And now comes the said defendant, Samuel L. Griffith, and

moves the court here to arrest the judgment heretofore rendered in this cause in this court, and for cause for arresting the said judgment, he sets down and shows to the court here the following, to wit:

Because he, the said defendant, has not been served with process, or had any legal notice of the institution or proceeding of this suit against him.

Because it does not appear by the return of the marshal to the summons issued in this case that he, this defendant, has been legally served therewith.

Because it does not appear anywhere in the pleadings in the case that the plaintiffs are not citizens of the State of Arkansas, or that all the plaintiffs are citizens of one State, and all the defendants are citizens of another.

And, also, because it is not averred in the declaration that the amount in controversy or the amount claimed in the suit is over the sum of five hundred dollars.

WALKER & GREEN.
CLARK & SPRING.

Filed 29th May, 1856.

A. McLEAN, *Clerk.*

Saturday morning, 8 o'clock, 31st May, A. D. 1856. Court met pursuant to adjournment; present, the Hon. Daniel Ringo, judge.

BARCROFT, BEAVER & Co., Plaintiffs,
vs.
SUTTON, GRIFFITH & Co., Defendants.

And now on this day come the parties aforesaid, by their attorneys respectively, and the motion in arrest of judgment heretofore filed was submitted to the court. On consideration, the court here doth order that the same be, and it is hereby, overruled. And thereupon the said defendants filed their writ of error to judgment by this court heretofore rendered in this cause against them to the Supreme Court, which is allowed, and to operate as a supersedeas, sufficient security having been given according to law.

Writ Error.

UNITED STATES OF AMERICA.

The President of the United States of America to the judge of the District Court of the United States of America for the western district of Arkansas, having circuit court jurisdiction, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said district court, having circuit court jurisdiction, before you, between Stacy B. Barcroft,

Thomas Beaver, John M. Mauck, Wetherill Lee, Thomas S. Foster, Samuel T. Canby, Mathew P. McEwen and J. W. Bray, merchants, and partners in trade, doing business under the firm, name and style of Barcroft, Beaver & Co., plaintiffs, and William B. Sutton, Samuel L. Griffith and James Sutton, late merchants, and partners in trade, trading and doing business under the name, style and firm of Sutton, Griffith & Co., defendants, a manifest error hath happened to the said William B. Sutton, Samuel L. Griffith and James Sutton, as by complaint appears; and it being fit the error, if any there hath been, shall be corrected, and full and speeedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next in the said Supreme Court, to be there and then held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 31st day of May, in the year of our Lord one thousand eight hundred and fifty-six, and of the independence of the United States the eightieth.

[L. S.]

Attest: A. McLEAN, *Clerk.*

I, Alexander McLean, clerk of the district court of the United States for the western district of Arkansas, do hereby certify, that the above and foregoing is a true and complete copy of the original writ of error in the case therein named now on file in my office.

Witness my hand and the seal of said court this 31st day of May, 1856.

[L. S.]

A. McLEAN, *Clerk.*

Citation.

United States of America, to Stacy B. Barcroft, Thomas Beaver, John M. Mauck, Wetherill Lee, Thomas S. Foster, Samuel T. Canby, Mathew P. McEwen, and J. W. Bray, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States, for the western district of Arkansas, wherein William B. Sutton, Samuel L. Griffith, and James Sutton are plaintiffs and you are defendants

moves the court here to arrest the judgment heretofore rendered in this cause in this court, and for cause for arresting the said judgment, he sets down and shows to the court here the following, to wit:

Because he, the said defendant, has not been served with process, or had any legal notice of the institution or proceeding of this suit against him.

Because it does not appear by the return of the marshal to the summons issued in this case that he, this defendant, has been legally served therewith.

Because it does not appear anywhere in the pleadings in the case that the plaintiffs are not citizens of the State of Arkansas, or that all the plaintiffs are citizens of one State, and all the defendants are citizens of another.

And, also, because it is not averred in the declaration that the amount in controversy or the amount claimed in the suit is over the sum of five hundred dollars.

WALKER & GREEN.
CLARK & SPRING.

Filed 29th May, 1856.

A. McLEAN, *Clerk.*

Saturday morning, 8 o'clock, 31st May, A. D. 1856. Court met pursuant to adjournment; present, the Hon. Daniel Ringo, judge.

BARCROFT, BEAVER & Co., Plaintiffs,
vs.
SUTTON, GRIFFITH & Co., Defendants.

And now on this day come the parties aforesaid, by their attorneys respectively, and the motion in arrest of judgment heretofore filed was submitted to the court On consideration, the court here doth order that the same be, and it is hereby, overruled. And thereupon the said defendants filed their writ of error to judgment by this court heretofore rendered in this cause against them to the Supreme Court, which is allowed, and to operate as a supersedeas, sufficient security having been given according to law.

Writ Error.

UNITED STATES OF AMERICA.

The President of the United States of America to the judge of the District Court of the United States of America for the western district of Arkansas, having circuit court jurisdiction, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea, which is in the said district court, having circuit court jurisdiction, before you, between Stacy B. Barcroft,

Thomas Beaver, John M. Mauck, Wetherill Lee, Thomas S. Foster, Samuel T. Canby, Mathew P. McEwen and J. W. Bray, merchants, and partners in trade, doing business under the firm, name and style of Barcroft, Beaver & Co., plaintiffs, and William B. Sutton, Samuel L. Griffith and James Sutton, late merchants, and partners in trade, trading and doing business under the name, style and firm of Sutton, Griffith & Co., defendants, a manifest error hath happened to the said William B. Sutton, Samuel L. Griffith and James Sutton, as by complaint appears; and it being fit the error, if any there hath been, shall be corrected, and full and speeedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next in the said Supreme Court, to be there and then held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, and according to the law and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 31st day of May, in the year of our Lord one thousand eight hundred and fifty-six, and of the independence of the United States the eightieth.

[L. S.]

Attest: A. McLEAN, *Clerk.*

I, Alexander McLean, clerk of the district court of the United States for the western district of Arkansas, do hereby certify, that the above and foregoing is a true and complete copy of the original writ of error in the case therein named now on file in my office.

Witness my hand and the seal of said court this 31st day of May, 1856.

[L. S.]

A. McLEAN, *Clerk.*

Citation.

United States of America, to Stacy B. Barcroft, Thomas Beaver, John M. Mauck, Wetherill Lee, Thomas S. Foster, Samuel T. Canby, Mathew P. McEwen, and J. W. Bray, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the district court of the United States, for the western district of Arkansas, wherein William B. Sutton, Samuel L. Griffith, and James Sutton are plaintiffs and you are defendants

in error, to show cause, if any there be, why the judgment in the writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Daniel Ringo, judge of said district court, this 31st day of May, A. D. 1856.

DANIEL RINGO,
U. S. Judge, for the
Western District of Arkansas.

Bond.

Supreme Court of the United States.

WILLIAM B. SUTTON, SAMUEL L. GRIFFITH, and JAMES SUTTON, late partners in trade, under the firm, name, and style of Sutton, Griffith & Co., Plaintiffs, vs. STACY B. BARCROFT, THOMAS BEAVER, JOHN M. MAUCK, Wetherill Lee, Thomas S. Foster, Samuel T. Canby, Mathew P. McEwen, and J. W. Bray, partners in trade, under the firm, name, and style of Barcroft, Beaver & Co., Defendants.	In Error.

Know all men by these presents, that we, Samuel L. Griffith, William B. Sutton, and Nicholas Spring and James P. Spring, are held and firmly bound unto the above named Stacy B. Barcroft, Thomas Beaver, John M. Mauck, Wetherill Lee, Thomas S. Foster, Samuel T. Canby, Mathew P. McEwen, and J. W. Bray, in the sum of six thousand dollars, to be paid to the said Stacy B. Barcroft, Thomas Beaver, John M. Mauck, Wetherill Lee, Thomas S. Foster, Samuel T. Canby, Mathew P. McEwen, and J. W. Bray, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this 31st day of May, A. D. 1856.

Whereas the above named Samuel L. Griffith, and William B. Sutton, and James Sutton have presented a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit by the district court of the United States for the western district of Arkansas, having circuit court jurisdiction:

Now, the condition of the above obligation is such, that if the above named William B. Sutton, Samuel L. Griffith, and James Sutton shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make good their plea,

then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

SAM'L L. GRIFFITH, [SEAL.]
WILLIAM B. SUTTON, [SEAL.]
N. SPRING, [SEAL.]
JAMES P. SPRING. [SEAL.]

Sealed and delivered in the presence of us—
S. F. CLARK.

I hereby approve the above bond, the sureties therein being shown to be sufficient, and admitted to be sufficient by the attorney representing said plaintiffs here.

Witness my hand, as United States district judge for the western district of Arkansas, this 31st day of May, A. D. 1856.

(Signed) DANIEL RINGO, *Judge.*

Assignment of Errors.

UNITED STATES OF AMERICA.

In the Supreme Court of the United States.

WILLIAM B. SUTTON, SAMUEL L. GRIFFITH, and JAMES SUTTON, partners in trade, under the firm and name and style of Sutton, Griffith & Co., Plaintiffs,

vs.

STACY B. BARCROFT, THOMAS BEAVER, JOHN M. MAUCK, Wetherill Lee, Thomas S. Foster, Samuel T. Canby, Mathew P. McEwen, and J. W. Bray, partners in trade, under the firm, name, and style of Barcroft, Beaver & Co., Defendants. } In Error.

And the said William B. Sutton, Samuel L. Griffith, and James Sutton now come and say, that in the record and proceedings aforesaid there is manifest error, in this, to wit:

1st. The court erred in overruling the demurrer of the said defendants below, James Sutton, to the replication of the said plaintiffs below to his said plea in abatement.

2. The court erred in overruling the motion of the said Samuel L. Griffith, in arrest of judgment.

3d. The said judgment was given in favor of the plaintiffs below; whereas, by the laws and customs of the United States, it ought to have been given in favor of the said defendants below.

Wherefore the said William B. Sutton, Samuel L. Griffith, and James Sutton pray that a citation and supersedeas may issue, and that the said judgment may be reversed, annulled, and held for

in error, to show cause, if any there be, why the judgment in the writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Daniel Ringo, judge of said district court, this 31st day of May, A. D. 1856.

DANIEL RINGO,
U. S. Judge, for the
Western District of Arkansas.

Bond.

Supreme Court of the United States.

WILLIAM B. SUTTON, SAMUEL L. GRIFFITH, and JAMES SUTTON, late partners in trade, under the firm, name, and style of Sutton, Griffith & Co., Plaintiffs, vs. STACY B. BARCROFT, THOMAS BEAVER, JOHN M. MAUCK, Wetherill Lee, Thomas S. Foster, Samuel T. Canby, Mathew P. McEwen, and J. W. Bray, partners in trade, under the firm, name, and style of Barcroft, Beaver & Co., Defendants.	In Error.

Know all men by these presents, that we, Samuel L. Griffith, William B. Sutton, and Nicholas Spring and James P. Spring, are held and firmly bound unto the above named Stacy B. Barcroft, Thomas Beaver, John M. Mauck, Wetherill Lee, Thomas S. Foster, Samuel T. Canby, Mathew P. McEwen, and J. W. Bray, in the sum of six thousand dollars, to be paid to the said Stacy B. Barcroft, Thomas Beaver, John M. Mauck, Wetherill Lee, Thomas S. Foster, Samuel T. Canby, Mathew P. McEwen, and J. W. Bray, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals, and dated this 31st day of May, A. D. 1856.

Whereas the above named Samuel L. Griffith, and William B. Sutton, and James Sutton have presented a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit by the district court of the United States for the western district of Arkansas, having circuit court jurisdiction:

Now, the condition of the above obligation is such, that if the above named William B. Sutton, Samuel L. Griffith, and James Sutton shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make good their plea,

then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

SAM'L L. GRIFFITH, [SEAL.]
WILLIAM B. SUTTON, [SEAL.]
N. SPRING, [SEAL.]
JAMES P. SPRING. [SEAL.]

Sealed and delivered in the presence of us—
S. F. CLARK.

I hereby approve the above bond, the sureties therein being shown to be sufficient, and admitted to be sufficient by the attorney representing said plaintiffs here.

Witness my hand, as United States district judge for the western district of Arkansas, this 31st day of May, A. D. 1856.

(Signed) DANIEL RINGO, *Judge.*

Assignment of Errors.

UNITED STATES OF AMERICA.

In the Supreme Court of the United States.

WILLIAM B. SUTTON, SAMUEL L. GRIFFITH, and JAMES SUTTON, partners in trade, under the firm and name and style of Sutton, Griffith & Co., Plaintiffs,

vs.

STACY [illegible] BANCROFT, THOMAS BEAVER, JOHN M. MAUCK, Wetherill Lee, Thomas S. Foster, Samuel T. Canby, Mathew P. McEwen, and J. W. Bray, partners in trade, under the firm, name, and style of Barcroft, Beaver & Co., Defendants. } In Error.

And the said William B. Sutton, Samuel L. Griffith, and James Sutton now come and say, that in the record and proceedings aforesaid there is manifest error, in this, to wit:

1st. The court erred in overruling the demurrer of the said defendants below, James Sutton, to the replication of the said plaintiffs below to his said plea in abatement.

2. The court erred in overruling the motion of the said Samuel L. Griffith, in arrest of judgment.

3d. The said judgment was given in favor of the plaintiffs below; whereas, by the laws and customs of the United States, it ought to have been given in favor of the said defendants below.

Wherefore the said William B. Sutton, Samuel L. Griffith, and James Sutton pray that a citation and supersedeas may issue, and that the said judgment may be reversed, annulled, and held for